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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

(FILED MAR 31, 1982-PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

MINTA H. REICHEL,	) NO. 80-4328
PLAINTIFF-APPELLANT	)
	) MEMORANDUM
v.	)
CALIFORNIA SHASTA COUNTY SUPERIOR COURT JUDGES, ET AL, DEFENDANTS-APPELLEES.	)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA -- THE HONORABLE MILTON L. SCHWARTZ, PRESIDING---ARGUED AND

BEFORE: WRIGHT, HUG and BOOCHEVER, CIRCUIT JUDGES

REICHEL COMPLAINED THAT HER CIVIL RIGHTS WERE VIOLATED BY A COUNTY LAW LIBRARY RULE THAT LIMITED DAILY PUBLIC ACCESS TO TWO HOURS. HER COMPLAINT WAS DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION.

WE AFFIRM.

(SEE DISSENTING OPINION BY BOOCHEVER P

FACTUAL BACKGROUND

THE LIBRARY WAS ORIGINALLY OPEN TO THE PUBLIC DURING COUNTY BUSINESS HOURS. LOSS OF MATERIALS CAUSED THE COUNTY TO LIMIT PUBLIC ACCESS TO TWO HOURS DAILY IN OCTOBER L974. WHEN A LIBRARIAN BECAME AVAILABLE IN JANUARY 1978, PUBLIC ACCESS WAS INCREASED TO FOUR HOURS PER DAY. PRESENTLY THE LIBRARY IS AGAIN OPEN TO THE PUBLIC DURING COUNTY BUSINESS HOURS.

WHILE ACCESS WAS LIMITED, REICHEL REQUESTED USE OF THE LIBRARY AFTER BUSINESS HOURS TO PREPARE FOR THREE LAWSUITS SHE HAD INITIATED IN PROPRIA PERSONA IN STATE COURT. IN TWO OF THESE ACTIONS SHE ATTEMPTED TO REASSERT INVERSE CONDEMNATION CLAIMS SHE HAD UNSUCCESSFULLY BROUGHT EARLIER WHILE REPRESENTED BY COUNSEL. IN THE THIRD, SHE SUED THE ATTORNEY WHO REPRESENTED HER IN THE PRIOR ACTIONS FOR MALPRACTICE. THE STATE TRIAL AND APPELLATE COURTS HELD THE FIRST TWO ACTIONS BARRED BY RES JUDICATA AND COLLAT-

ERAL ESTOPPEL.

REICHEL COMPLAINED TO THE DISTRICT COURT THAT THE COUNTY'S RESTRICTIONS ON PUBLIC USE OF THE LIBRARY (1) DENIED HER A FAIR ADVERSARIAL HEARING BECAUSE SHE WAS UNABLE TO PREPARE THOROUGHLY; (2)DISCRIMINATED AGAINST HER; AND (3) INTERFERED WITH A PROPERTY RIGHT BECAUSE SHE HAD PAID A $4.00 LAW LIBRARY FEE PLUS A FILING FEE. THIS ACTION IS AGAINST COUNTY JUDGES, CLAIMED TO BE EX OFFICIO MEMBERS OF THE LIBRARY BOARD, ATTORNEYS WHO OPPOSED HER IN HER STATE SUITS, AND THE LIBRARY BOARD OF DIRECTORS. SHE SEEKS DAMAGES EQUAL TO THOSE PRAYED FOR IN HER UNSUCCESSFUL STATE SUITS PLUS AN ATTORNEY'S FEE.

THE DISTRICT COURT DISMISSED WITH PREJUDICE FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED.

ANALYSIS

A COMPLAINT SHOULD NOT BE DISMISSED UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF THE

THAT WOULD ENTITLE THE PLAINTIFF TO RELIEF CONLEY V. GIBSON, 355 U.S. 41, 45-46 (1957). WITH THAT STANDARD IN MIND, WE REVIEW HERE REICHEL's CLAIMS UNDER 42 U.S.C. §1983. HER CLAIMS UNDER OTHER PROVISIONS ARE FRIVOLOUS.

TO STATE A CLAIM UNDER SECTION 1983, IT MUST BE ALLEGED THAT THE DEFENDANTS HAVE DEPRIVED THE PLAINTIFF OF A CONSTITUTIONAL RIGHT. THE CLAIM REICHEL ASSERTS DOES NOT INVOLVE A DEPRIVATION OF CONSTITUTIONAL RIGHTS. THE FACT THAT $4.00 OF THE FILING FEE GOES TO SUPPORT THE LAW LIBRARY DOES NOT GIVE A VESTED PROPERTY INTEREST IN THE LIBRARY TO ALL PLAINTIFFS: SHE THEREFORE WAS NOT DEPRIVED OF A PROPERTY RIGHT.

FURTHERMORE, THERE WAS NO VIOLATION OF REICHEL's DUE PROCESS RIGHTS. SHE RELIED UPON BOUNDS V. SMITH , 430 U.S. 817 (1977) WHEREIN THE SUPREME COURT HELD THAT A PRISONER HAS A FUNDAMENTAL RIGHT OF ACCESS TO THE COURTS, AND THAT THAT RIGHT REQUIRES

PRISON AUTHORITIES TO PROVIDE PRISONERS WITH ADEQUATE LAW LIBRARIES, OR ASSISTANCE IN THE PREPARATION OF LEGAL FORMS FROM SOME ONE WITH LEGAL TRAINING. THAT RIGHT IS PREMISED ON THE DUE PROCESS CLAUSE AND ASSURES INMATES OF THE OPPORTUNITY TO CHALLENGE VIOLATIONS OF THEIR CONSTITUTIONAL RIGHTS AND UNLAWFUL CONVICTIONS. STORSETH V SPELLMAN, 654 F.2d 1349 (9th Cir. 1981) BECAUSE REICHEL's CLAIMS ARE CIVIL, AND DO NOT INVOLVE FUNDAMENTAL RIGHTS AND SHE IS NOT INCARCERATED, HER SITUATION DIFFERS FROM THAT OF THE PRISONERS IN BOUNDS AND DOES NOT REQUIRE THE SAME ACCESS TO A LAW LIBRARY. THE RIGHTS OF ORDINARY CIVIL LITIGANTS MAY IN SOME CASES BE LIMITED OR CONDITIONED. ORTWEIN V SCHWAB , 410 U.S. 656 (1973) UNITED STATES V KRAS 409 U.S. 434 (1973) IN BODDIE V CONNECTICUT, 401 U.S. 371 (1971) AN INDIGENT WAS DENIED ACCESS TO STATE CO COURT, AND THUS WAS UNABLE TO OBTAIN A DIVORCE, BECAUSE SHE COULD NOT PAY REQUIRED FILING FEES. THE COURT HELD THE STATE HAD

VIOLATED BODDIE'S DUE PROCESS RIGHTS BY DENYING ACCESS TO THE COURTS ON THIS BASIS. HOWEVER. IN ORTWEIN AND KRAS THE COURT DIS_ TINGUISHED BODDIE, HOLDING THAT WHERE THE CIVIL LITIGANT SEEKS ACCESS TO THE COURTS TO VINDICATE A FUNDAMENTAL RIGHTS (SUCH AS THE MARRIAGE RELATIONSHIP IMPLICATED IN BODDIE,) LIMITATION OF ACCESS VIOLATES DUE PROCESS. HOWEVER, WHERE THE CIVIL ACTION DOES NOT INVOLVE FUNDAMENTAL RIGHTS, ACCESS MAY BE CONDITIONED OR LIMITED BY MEANS WHICH ARE REASONABLY RELATED TO A VALID STATE OBJECTIVE. ORTWEIN, 410 U.S. AT 656 (APPEAL OF WELFARE BENEFITS DECISION): KRAS,409 U.S. AT 444-45 (FILING OF BANKRUPTCY PETITION).

REICHEL's civil actions for property damAGE AND AMLPRACTICE DID NOT INVOLVE HER FUNDAMENTAL RIGHTS. THE COUNTY'S LIMITATION ON A NON-LAWYER'S ACCESS TO THE LIBRARY WAS RATIONALLY RELATED TO A VALID OBJECTIVE, PREVENTING THE LOSS OF BOOKS. THIS CONCLUSION IS SUPPORTED BY WRIGHT V LANE COUNTY COMMISSIONERS, 459 F. 2d 1021 (9th CIR.1972).

WHERE A LAW LIBRARY POLICY DISCRIMINATED IN FAVOR OF ATTORNEYS.WE HELD THAT "THE LITIGANT ATTORNEY CLASSIFICATION AND THE HOURS SELECTED BOTH POSSESS A RATIONAL RELATIONSHIP TO THE ACHIEVEMENT OF THE GOAL OF SECURITY." 459 F2d at 1023. THE FACT THAT ACCESS TO ALTERNATIVE RESOURCES WAS MORE AVAILABLE TO WRIGHT THAN TO REICHEL IS NOT A SUFFICIENT DISTINCTION TO COMPEL A DIFFERENT RESULT IN THIS CASE.

WE NOTE THAT IN OUR VIEW IT WOULD BE FAR PREFERABLE TO PERMIT, IN SOME FASHION, PRO SE LITIGANTS THE SAME ACCESS AS ATTORNEYS, BUT WE CANNOT SAY THAT FAILURE TO SO PROVIDE IS IRRATIONAL. REICHEL WAS NOT DENIED ACCESS TO THE COURT IN ANY WAY SIMILAR TO THE PRISONER IN BOUNDS, INASMUCH AS SHE DID HAVE SOME ACCESS TO THE LOCAL LAW LIBRARY AND OTHER LIBRARIES WERE AVAILABLE TO HER. FURTHERMORE, SHE WAS NOT PRECLUDED FROM FILING HER CASE AS IN BODDIE, BUT WAS ONLY INCONVENIENCED IN PREPARING IT.

MOREOVER, WE NOTE THAT NO AMOUNT OF LIBRARY USAGE COULD HAVE RESULTED IN RECOVERY ON HER REASSERTED CLAIMS FOR PORPERTY DAMAGE BECAUSE THEY WERE CLEARLY BARRED BY RES JUDICATA AND COLLATERAL ESTOPPEL. IT WAS ONLY THE MALPRACTICE ACTION THAT WAS NOT CLEARLY FORECLOSED BY PRIOR JUDGMENTS.

THE APPELLANT HAS FAILED TO ALLEGE A CLAIM FOR VIOLATION OF CONSTITUTIONAL RIGHTS COGNIZABLE UNDER SECTION 1983.

THE JUDGMENT IS AFFIRMED.

BOOEVER, J., DISSENTING:

FILED MAR 31 1982 PHILLIP B WINBERRY
CLERK, US COURT OF APPEALS

I RESPECTFULLY DISSENT. I AGREE WITH THE MAJORITY THAT REICHEL HAS NOT ASSERTED A RECOGNIZED FUNDAMENTAL RIGHT TO MEANINGFUL CLAIMS. I AGREE THAT THE APPLICABLE DUE PROCESS STANDARD IN THIS CASE IS WHETHER THE HOURS LIMITATION IS RATIONALLY RELATED TO A VALID STATE OBJECTIVE. THE RATIONAL BASIS STANDARD IS ALSO APPROPRIPRIATE FOR A DETERMINATION OF WHETHER THE CLASSIFICATION BETWEEN LAWYERS AND PRO SE LITIGANTS VIOLATED EQUAL PROTECTION.

THE MAJORITY CORRECTLY OBSERVES THAT A COMPLAINT SHOULD NOT BE DISMISSED UNLESS IT APPREARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF A CLAIM FOR RELIEF. CONLEY V GIBSON 355 U.S. 41, 45-46 (1957) . REICHEL HAS ALLEGED FACTS WHICH, IF PROVEN, WOULD SHOW THAT THE SHASTA COUNTY LAW LIBRARY'S POLI-

BOOCHEVER, J., DISSENTING:

FILED MAR 31 1982 PHILLIP B. WINBERRY
CLERK, US COURT OF APPEALS

I RESPECTFULLY DISSENT. I AGREE WITH THE MAJORITY THAT REICHEL HAS NOT ASSERTED A RECOGNIZED FUNDAMENTAL RIGHT TO MEANINGFUL ACCESS TO THE COURTS TO PURSUE HER PROPERTY AND MALPRACTICE CLAIMS. I AGREE THAT THE APPLICABLE DUE PROCESS STANDARD IN THIS CASE IS WHETHER THE HOURS LIMITATION IS RATIONALLY RELATED TO A VALID STATE OBJECTIVE. THE RATIONAL BASIS STANDARD IS ALSO APPROPRIATE FOR A DETERMINATION OF WHETHER THE CLASSIFICATION BETWEEN LAWYERS AND PRO SE LITIGANTS VIOLATED EQUAL PROTECTION.

THE MAJORITY CORRECTLY OBSERVES THAT A COMPLAINT SHOULD NOT BE DISMISSED UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF A CLAIM FOR RELIEF. CONLEY V.GIBSON, 355 U.S. 41, 45-46 (1957). RE REICHEL HAS ALLEGED FACTS WHICH, IF PROVEN, WOULD SHOW THAT THE SHASTA COUNTY LAW LIBRARY'S POLICY OF EXEMPTING ATTORNEYS BUT NOT PRO SE LITIGANTS FROM THE TWO HOUR PER DAY LIMITATION

CY OF EXEMPTING ATTORNEYS BUT NOT PRO SE LITIGANTS FROM THE TWO HOUR PER DAY LIMITATION ON USE OF THE LIBRARY WAS NOT RATIONALLY RELATED TO PREVENTING THE LOSS OF LIBRARY BOOKS.

ACCORDING TO THE COMPLAINT, THE LIBRARY TRUSTEES IMPLEMENTED A POLICY OF ALLOWING PUBLIC ACCESS TO THE LAW LIBRARY ONLY BETWEEN 3 AND 5PM. LAWYERS WERE PERMITTED ADDITIONAL ACCESS BY OBTAINING AND RETURNA KEY FROM THE JUDGES' SECRETARY. ONLY LAWYERS WERE PERMITTED TO CHECK OUT BOOKS.[1] REICHEL ALLEGES THAT SHE SOUGHT AND WAS REFUSED ADDITIONAL LIBRARY ACCESS DURING THE BUSINESS HOURS. THUS, THE ACCESS SHE

1. REICHEL'S COMPLAINT ALLEGES THAT THE LIBRARY TRUSTEES POSTED THESE RULES:

Law LIBRARY OPEN TO THE PUBLIC 3PM TO 5PM

1. ONLY LAWYERS MAY CHECK OUT BOOKS.
2. CHECK OUT PERIOD IS ONE WEEK.
3. WHEN LIBRARY IS CLOSED, LAWYERS MAY OBTAIN KEY FROM JUDGES' SECRETARY'S OFFICE, RELOCK DOOR WHEN LEAVING, RETURN KEY TO SECRETARY WHO WILL THEN CHECK OUT BOOKS WITHDRAWN BY LAWYERS.

SOUGHT WOULD HAVE BEEN PROVIDED IF THE CHECK OUT PROCEDURE FOR KEYS AND BOOKS APPLIED TO ATTORNEYS HAD BEEN EXTENDED TO PRO SE LITIGANTS. WHILE IT IS NOT OUR FUNCTION TO ADJUDGE THE WISDOM OF LEGISLATIVE ACTS, THE CONSTITUTION REQUIRES THAT CLASSIFICATIONS BETWEEN GROUPS OF PERSONS NOT BE ARBITRARY OR IRRATIONAL. BARRY, CHAIRMAN, RACING AND WAGERING BARRY V BARCHI, 443 U.S. 55, 67-68 (1979)

THE COUNTY HAS ARGUED THAT PERMITTING ATTORNEYS TO USE THE LIBRARY FOR LONGER PERIODS LIMITS THE NUMBER OF PERSONS HAVING ACCESS TO THE LIBRARY TO A KNOWN, DEFINABLE, AND TRACEABLE GROUP. THIS RATIONAL EXPLAINS EXCLUSION OF PRO SE LITIGANTS. PRO SE LITIGANTS HAVE CHARACTERISTICS SIMILAR TO THOSE CHARACTERISTICS OF ATTORNEYS THAT JUSTIFY ALLOWING ADDITIONAL ACCESS. ASIDE FROM PRISONERS, WHO DO NOT HAVE ACCESS TO PUBLIC LIBRARIES,

FEW BRING LAW SUITS IN PROPRIA PERSONA ADDITIONAL ACCESS DURING BUSINESS HOURS COULD BE PROVIDED THROUGH THE KEY CHECK OUT ALREADY IN PLACE FOR ATTORNEYS AND WOULD POSE NO GREATER BURDEN THAN THAT OF ALLOWING ACCESS TO ATTORNEYS. PRO SE LITIGANTS CAN BE AS EASILY TRACED AS ATTORNEYS: THEIR ADDRESSES APPEAR ON COURT DOCUMENTS AND THEY CAN BE EXPECTED TO APPEAR IN COURT AT VARIOUS STAGES OF THEIR CASES.

THE COUNTY DID NOT CONTEND IN THIS APPEAL THAT PRO SE LITIGANTS ARE LESS TRUSTWORTHY OR TRACEABLE THAN ATTORNEYS, NOR DID IT ADVANCE ANY REASON WHY THE CHECK OUT PROCEDURE FOR ATTORNEYS COULD NOT BE EXTEDED TO THE SMALL GROUP OF PRO SE LITIGANTS WITH PENDING CASES.

OUR HOLDING IN WRIGHT V LANE COUNTY COMMISSIONERS, 459 F2d 1021 (9th CIR. 1972) IS NOT CONTROLLING. IN WRIGHT WE RULED THAT LIMIT ON PRO SE LITIGANTS' AFTER-HOURS

LIBRARY ACCESS WAS RATIONAL WHERE THE COUTY LAW LIBRARY WAS OPEN TO PRO SE LITIGANTS FOR EIGHT HOURS A DAY AND A NEARBY LAW LIBRARY WAS AVAILABLE WHEN THE COUNTY LIBRARY CLOSED.

WE HELD IN-WRIGHT THAT THE COUNTY'S INTEREST IN LIBRARY SECURITY "MAY BE ACHIEVED BY LIMITING ACCESS TO THE LAW LIBRARY DURING NON BUSINESS HOURS." 459 F2D AT 1023 ((EMPHASIS ADDED) HERE, UNLIKE IN WRIGHT THE HOURS LIMITATION AND ITS EFFECTS ON PRO SE LITIGANTS WERE MUCH MORE SEVERE. THE SHASTA COUNTY LAW LIBRARY WAS THE ONLY PUBLIC LAW LIBRARY IN REDDING, AND THE HOURS LIMITATION LEFT PRO SE LITIGANTS WITH LOCAL ACCESS TO LEGAL MATERIALS FOR ONLY TWO HOURS PER DAY. REICHEL HAS ALLEGED THAT THE HOURS LIMITATION REQUIRED HER TO DRIVE 160 MILES TO SECURE ACCESS TO LEGAL MATERIALS. THE SYSTEM ALLOWED ACCESS TO ATTORNEYS, AND THE COUNTY HAS OF-

NO REASON WHY THAT SAME SYSTEM COULD NOT BE EXTENDED TO THE SMALL GROUP OF PRO SE LITIGANTS.

DEPRIVING PRO SE LITIGANTS OF BUSINES-HOURS ACCESS TO THE LIBRARY WHILE GRANTING IT TO ATTORNEYS UNDER A CHECK IN SYSTEM WAS NOT RATIONALLY RELATED TO ANY VALID PURPOSE. SEE O'CONNOR V MOWBRAY, 504 F.SUPP 139 (D.NEV. 1980). (GREATER RESTRICTION ON AFTER HOURS ACCESS OF PRO SE LITGANTS THAN ON ATTORNEYS SHOWN NOT TO BE RATIONALLY RELATED TO OBJECTIVE OF SECURITY.) REICHEL THEREFORE STATED A CLAIM UNDER 42 U.S.C. § 1983 FOR VIOLATION OF HER EQUAL PROTECTION RIGHTS.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

(FILED - MAY 27, 1982 - PHILLIP B. WINBERRY CLERK, US COURT OF APPEALS)

MINTA H. REICHEL	)	NO. 80- 4328
PLAINTIFF-APPELLANT,	)	DC NO.
VS	)	S79-73MLS
CALIFORNIA SHASTA	)	
COUNTY SUPERIOR COURT	)	ORDER
DEFENDANTS-APPELLEES.	)	

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT CALIF.

BEFORE: WRIGHT, HUG, and BOOCHEVER, CIRCUIT JUDGES

A MAJORITY OF THE PANEL IN THE ABOVE-ENTITLED CASE HAS VOTED TO DENY THE PETITION FOR REHEARING, AND THE PANEL HAS UNANIOUSLY VOTED TO REJECT THE SUGGESTION FOR A REHEARING EN BANC.

THE FULL COURT HAS BEEN ADVISED OF THE EN BANC SUGGESTION AND NO JUDGE OF THE COURT HAS REQUESTED A VOTE ON IT. FED. R. APP. P. 35(b).

THE PETITION FOR REHEARING IS DENIED AND THE SUGGESTION FOR A REHEARING EN BANC IS REJECTED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED FEB 19 1981 -RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

MINTA H. REICHEL PLAINTIFF-APPELLANT VS CALIFORNIA SHASTA SUPERIOR COURT JUDGES, ET AL, DEFENDANTS-APPELLEES)	NO. 80-4328 D.C. C 79-73-MLS EASTERN CALIFORNIA (SACRAMENTO) ORDER

BEFORE: TANG AND SKOPIL, CIRCUIT JUDGES

UPON DUE CONSIDERATION, THE COURT ISSUES THE FOLLOWING ORDER:

(a) APPELLEES' MOTIONS FOR SUMMARY AFFIRMANCE ARE DENIED, BECAUSE IT APPEARS THAT APPELLANT RAISES ISSUES ON APPEAL WHICH WARRANT FURTHER CONSIDERATION BY THIS COURT AND,

(b) APPELLEES SHALL FILE THEIR BRIEFS WITHIN FOURTEEN (14) DAYS OF THE ENTRY OF THIS ORDER.

IN THE UNITED STATES DISTRICT COURT

FPR THE EASTERN DISTRICT OF CALIFORNIA

(FILED MARCH 18, 1980)

MINTA H. REICHEL	)	
	)	
PLAINTIFF,	)	
	)	
VS	)	CIVIL NO.
	)	S-79-73-MLS
CALIFORNIA SHASTA COUNTY	)	
SUPERIOR COURT JUDGES	)	
ET AL,	)	
DEFENDANTS.	)	

MEMORANDUM AND ORDER

THE MOTIONS OF DEFENDANTS FRANKLIN S. CIBULA, RANDALL J. PRESLIEGH (PRESLEIGH) NES CHRISTENSEN, ROLAND IVERSON, SHASTA SUPERIOR COURT JUDGES CLYDE SMALL, RICHARD W. ABBE, RICHARD B. EATON, AND WILLIAM H. PHELPS, SHASTA COUNTY BOARD OF SUPERVISORS AND SUPERVISORS HENRY KEEFER, BESSIE L. SANDERS, PATRICK LA POINTE, JOHN R. CATON, R.D.GOVER, SUSAN L. EVANS AND STEPHEN C. SWENDIMAN, SHASTA COUNTY COUNSEL ROGERT A. REHBERG, SHASTA COUNTY LAW LIBRARY BOARD OF DIRECTORS AND DIRECTORS LAWRENCE

(LAURENCE) W. CARR, ALBERT F.CUNNINGHAM, TODD C. FINEBERG, TO DISMISS THIS ACTION FOR FAILURE TO STATE A CLAIM CAM ON FOR HEARING ON MARCH 14, 1980, PURSUANT TO FORMAL NOTICE OF MOTION. APPEARANCES WERE MADE BY PLAINTIFF MINTA REICHEL, IN PRO PER, BY KATHLEEN JOLLY FOR DEFENDANT CIBULA BY JAMES FREEMAN FOR DEFENDANTS CHRISTENSEN AND IVERSON, AND BY DAVID SCHMIDT FOR DE-FENDANT PRESLEIGH. THERE WERE NO OTHER APPEARANCES. ORAL ARGUMENT WAS PRESENTED BY THE APPEARING COUNSEL AND BY PLAINTIFF.

THE COURT ANNOUNCED AT THE HEARING ITS INTENTION TO GRANT THE MOTIONS TO DISMISS AS TO DEFENDANTS CIBULA, PRESLEIGH,CHRIST-ENSEN AND IVERSON, AND TOOK THE REMAINING MOTIONS TO DISMUSS UNDER SUBMISSION. AFTER CONSIDERING THE MEMORANDA AND DECLARATIONS SUBMITTED BY THE PARTIES, AND PLAINTIFF'S ORAL ARGUMENT, THE COURT CONSIDERS THE RE-MAINING MOTIONS TO DISMISS THIS ACTION FOR

FAILUR TO STATE A CLAIM TO BE WELL TAKEN, AND, THEREFORE, GRANTS THOSE MOTIONS.

PLAINTIFF'S CLAIMS UNDER 42 U.S.C. §§1983, 1985(3) and 1986 AGAINST THE DEFENDANT JUDGES, SUPERVISORS, LIBRARY DIRECTORS AND COUNTY COUNSEL, FAIL BECAUSE PLAINTIFF'S COMPLAINT, ITSELF, ESTABLISHES THAT THE CHALLENGED LIBRARY POLICIES RESTRICTING PUBLIC ACCESS TO THE LAW LIBRARY WERE RATIONALLY RELATED TO THE LEGITIMATE GOVERNMENTAL OBJECTIVE OF PRESERVING AND PROTECTING LAW LIBRARY RESOURCES. SEE WRIGHT V LANE COUNTY COMMISSIONERS, , 459 F.2d 1021(9 th Cir.1972). THE COURT DOES NOT READ BOUNDS V SMITH , 97 S. Ct. 1491 (1977), AS REQUIRING THE SAME RESULT. THE AFFIRMATIVE DUTIES IMPOSED ON STATE OFFICIALS BY THAT CASE ARE IMPOSED TO OVER-COME THE DISABILITIES THAT CONFINEMENT IM-POSES UPON A PRISONER IN EXERCISING HIS FUNDAMENTAL RIGHT OF ACCESS TO THE COURTS.

PLAINTIFF, AND OTHER UNINCARCERATED PERSONS, ARE NOT SUBJECT TO SUCH DISABILITIES. THE MANDATE OF BOUNDS V SMITH , SUPRA IS THEREFORE, INAPPLICABLE TO THIS CASE.

PLAINTIFF ALSO FAILS TO STATE CLAIMS UNDER UNDER 42 U.S.C.§§1988 and 2000a-1 AGAINST THESE DEFENDANTS. SECTION 1988 DOES NOT IN AND OF ITSELF CREATE ANY REMEDIES FOR VIOLATIONS OF CIVIL RIGHTS. PYLES V. KEAN 418 F.Supp 269, 271 n 1 (S.D.N.Y. 1976); CANNON V. UNIVERSITY OF CHICAGO, 559 F.2d 1063 (7th Cir. 1976), REV'D ON OTHER GROUNDS 99 S.CT 1946(1979). Section 2000a-1 PROVIDES A CAUSE OF ACTION FOR DISCRIMINATION ON THE GROUNDS OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN. PLAINTIFF DOES NOT ALLEGE ANY SUCH DISCRIMINATION.

NOR DOES PLAINTIFF STATE A CLAIM AGAINST THESE DEFENDANTS DIRECTLY UNDER THE FIRST, FIFTH, THIRTEENTH, OR FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION. DIRECT

ACTIONS UNDER THE FIRST AND FIFTH AMENDMENTS REDRESS ONLY CONSTITUTIONAL TORTS UNDER COLOR OF FEDERAL LAW. DAVIS V PASSMAN, 99 s.ct. 2264 (1979); DELLUMS V POWELL, 566 F.2d 167 (D.C.Dir. 1977); BATON V PRADE, 524 F2d 862 (3rd Cir. 1975) PETERSON V TALISMAN SUGAR CORP., 478 F2d 73 (5th Cir. 1973); PATMORE V. CARLSON, 392 F. SUPP. 737 (E.D. ILL. 1975). PLAINTIFF FAILS TO ALLEGE ANY ACTION UNDER COLOR OF FEDERAL LAW ON THE PART OF THESE DEFENDDANTS. PLAINTIFF FURTHER FAILS TO STATE A CLAIM UNDER THE THIRTEENTH AMENDMENT SINCE SHE FAILS TO ALLEGE ANY RACIAL DISCRIMINATION ON THE PART OF THESE DEFENDANTS. FINALLY PLAINTIFF FAILS TO STATE A CLAIM DIRECTLY UNDER THE FOURTEENTH AMENDMENT. COURTS HAVE YET TO RECOGNIZE A DIRECT CAUSE OF ACTION UNDER THIS AMENDMENT. SEE MOLINA V. RICHARDSON, 578 F.2d 846 (9th Cir 1978): TURPIN V MAILET, 591 F.2d 426

(2d Cir. 1979).

IT IS THEREFORE ORDERED THAT THE MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED ARE GRANTED AS TO DEFENDANTS FRANKLIN S. CIBULA, RANDALL J. PRESLEIGH, NELS CHRISTENSEN, ROLAND IVERSON, SHASTA SUPERIOR COURT JUDGES CLYDE SMALL, RICHARD W. ABBE, RICHARD B. EATON, AND WILLIAM H. PHELPS, SHASTA COUNTY BOARD OF SUPERVISORS AND SUPERVISOR HENRY KEEFER, BESSIE L. SANDERS, PATRICK LA POINTE, JOHN R. CATON, R.D. GOVER, SUSAN L. EVANS, AND STEPHEN . C. SWENDIMAN, SHASTA COUNTY COUNSEL ROBERT A. REHBERG, SHASTA COUNTY LAW LIBRARY BOARD OF DIRECTORS AND DIRECTORS LAURENCE W. CARR, ALBERT F. CUNNINGHAM, AND TODD C. FINEBERG, AND THE ACTION IS DISMISSED WITH PREJUDICE, AS TO THEM.

DATED: MARCH 18, 1980

/s/MILTON L. SCHWARTZ
UNITED STATES
DISTRICT JUDGE

MINTA H. REICHEL
P.O. BOX 2304
REDDING, CA 96099
TELE(916) 241-6772
APPEARING IN PRO SE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MINTA H. REICHEL	) NO.80-4328
PLAINTIFF-APPELLANT	) D.C.NO-S79-73-MLS
VS	) CORRECTION OF
	) ERROR FROM APPEAL
CALIFORNIA SHASTA	) TO PETITION FOR
COUNTY SUPERIOR COURT	) CERTIORARI TO THE
JUDGES, ET AL	) UNITED STATES S
DEFENDANTS-APPELLEES	) SUPREME COURT
	28 USC 1254(1)
	28 USC 2103
	U.S. SUPREME COURT
	RULE 19.1,2,
	REQUEST CLERK TO
	CERTIFY AND TRANSMIT

MINTA H. REICHEL, PLAINTIFF APPELLANT HEREIN APOLOGISES TO THIS COURT FOR HER MIS-INTERPRETATION OF 28 U.S.C. 1254(2) ON JUNE 10, 1982, TYPOGRAPHICAL ERROR CORRECTION REQUESTED ON JUNE 24, ACCEPTED AND FILED ON JUNE 28, 1982 BY THIS COURT.

I ERRORED IN READING 28 U.S.C. 1254(2) AND U.S. SUPREME COURT RULE 10. THEREFORE PLAINTIFF-APPELLANT PRAYS THAT MY NOTICE

OF APPEAL MAY BE INTERPRETED UNDER 28 USC. 2103 BEING A NOTICE OF MY INTENT FOR WRIT OF CERTIORARI UNDER 28 U.S.C. 1254(1), AND NOT APPEAL UNDER 28 USC 1254(2) AS FILED ON JUNE 24, 1982 AND JUNE 28, 1982.

PETITION FOR WRIT OF CERTIORARI WILL CONTINUE TO BE A REQUEST OF REVIEW OF THE COURT OF APPALS MEMORANDUM AND ORDER, THE STATUTES 42 U.S.C. 1983, 1985(2)(3), 1986, 1988, 2000a-(b)(4),(c),(d), and 2000a-1 AS OF THE UNITED STATES CODES;ALSO THE FIRST, FIFTH, THIRTEENTH, FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, CIVIL RIGHTS ACT 1871, EQUAL RIGHTS ACT 1964.

1.THE MEMORANDUM DECISION OF THIS COURT IS IN CONFLICT WITH ANOTHER DECISION OF COURT OF APPEALS DISTRICT OF NEVADA OF THE NINTH CIRCUIT; HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS; AND SO FAR SANCTIONED

SUCH A DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXCERCISE OF THIS COURT'S POWER OF SUPERVISION; WHEN A FEDERAL COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT, OR HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AS STATED IN RULE 17.1(a)(b)(c).

IN ACCORDANCE WITH RULE 19.1, REQUEST FOR CERTIFICATION OF THE RECORDS ON THIS CASE, INCLUDING ALL DOCUMENTS LISTED AS EXHIBITS FILED ON JUNE 1, 1981 IN CUSTODY OF THIS COURT FOR TRANSMITAL TO THE SUPREME COURT.

NO HARM HAS BEEN DONE TO DEFENDANTS AND THERFORE THIS NOTICE OF MISINTERPRETATION IS TIMELY AS THE JURISDICTIONAL STATEMENT AND PETITION FOR WRIT OF CERTIORARARI ARE BOTH NINETY DAYS.

DATED: /s/JULY 22, 1982

/s/MINTA H. REICHEL

AMENDMENTS TO THE CONSTITUTION-------

AMENDMENT I---FREEDOM OF RELIGION, SPEECH AND PRESS; ------

CONGRESS SHALL MAKE NO LAW----OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; --- PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

AMENDMENT V.-----DUE PROCESS; JUST COMPENSATION FOR PROPERTY

NO PERSON SHALL ----BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION."

AMENDMENT XIII- SLAVERY ABOLISHED

SECTION 1: NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE, EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, SHALL EXIST WITHIN THE UNITED STATES, OR ANY PLACE SUBJECT TO THEIR JURISDICTION

SECTION 2: CONGRESS SHALL HAVE POWER TO

ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION.

AMENDMENT XIV.- CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

SECTION I. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. -----"

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE THIRD APPELATE DISTRICT
(SHASTA)

FILED DECEMBER 12, 1977, COURT OF APPEAL THIRD DISTRICT, WILFRIED J. KRAMER, CLERK

MINTA H. REICHEL, PLAINTIFF AND APPELLANT	3 CIV. 16263
VS	SUPERIOR CT. NO. 54513
OCHINERO CONSTRUCTION COMPANY, INC., A CORPORATION, ET AL. DEFENDANTS AND RESPONDENTS.	

THE COURT:

PLAINTIFF APPEALS FROM JUDGMENT OF DISMISSAL AFTER THE COURT SUSTAINED DEMURRERS WITHOUT LEAVE TO AMEND.

FACTS.

BASED PRINCIPALLY ON THE THEORY OF NEGLIGENCE IN THE CLEARING OF CALABOOSE CREEK AND THE CONSTRUCTION OF A CULVERT AND PARK-

ING LOT ADJACENT TO HER PROPERTY, PLAINTIFF IN 1970 SUED THE WITHIN DEFENDANTS AND OTHERS[1] TO RECOVER FOR THE DAMAGE ALLEGELY RESULTING TO HER SWIMMING POOL, ITS COPING, AND APRON, AND THE RETAINING WALL AND FENCE. AFTER COURT TRIAL, THE TRIAL COURT FOUND FOR THE DEFENDANTS. WE AFFIRMED THE JUDGMENT IN AN OPINION FILED MAY 23, 1975(3 CIVIL 14495, uNPUB. OPN.).

IN 1976 PLAINTIFF FILED THE INSTANT COMPLAINT FOR DAMAGES AGAINST THE SAME DEFENDDANTS. THIS COMPLAINT CONTAINS FIVE CAUSES OF ACTION. THE FIRST IS FOR INVERSE CONDEMNATION AGAINST THE CITY OF REDD. THE SECOND THROUGH FIFTH CAUSES OF ACTION ARE FOR TRESPASS AND ENCROACHMENT AGAINST THE REMAINING NAMED DEFENDANTS (THE "OCHINERO AND WOODWARD GROUP") AND VARIOUS UNNAMED DOE DEFENDANTS. ALL FIVE CAUSES OF ACTION ARE

1. THE NAMED DEFENDANTS WERE: CITY OF REDDING; WOODWARD AND NICHOLS, A CO-PARTNERSHIP; WILLARD M. WOODWARD: JANE E . WOOD - WARD; EUGENE NICHOLS: TAMMY NICHOLS; OCHINERO CONSTRUCTION COMPANY, INC.; EDWARD OCHINERO; AND BEATRICE OCHINERO.

BASED ON THE SAME FACTUAL SITUATION AS HAD BEEN THE SUBJECT OF PLAINTIFF'S 1970 LAWSUIT, NAMELY, THE CLEARING OF CALABOOSE CREEK AND THE CONSTRUCTION OF A CULVERT AND PARKING LOT ADJACENT TO PLAINTIFF"S PROPERTY.

THE OCHINERO AND WOODWARD GROUP FILED DEMURRERS TO PLAINTIFF'S COMPLAINT ON JUNE 24 1976, THE COURT SUSTAINED THE DEMURRERS ON THE BASIS OF RES JUDICATA AND COLLATERAL ESTOPPEL WITHOUT LEAVE TO AMEND. ON JUNE 30 1976, JUDGMENT OF DISMISSAL WAS ENTERED IN FAVOR OF THE OCHINERO AND WOODWARD GROUP FROM WHICH PLAINTIFF APPEALS.

A CAUSE OF ACTION IS BASED UPON THE IN-JURY TO THE PLAINTIFF, AND NOT THE PARTICU-LAR LEGAL THEORY BY WHICH PLAINTIFF CHARACT-ERIZES DEFENDANT'S WRONGFUL ACT. HENCE A JUDGMENT FOR THE DEFENDANT IS A BAR TO A SUBSEQUENT ACTION BY THE PLAINTIFF BASED ON THE SAME INJURY TO THE SAME RIGHT, EVEN THOUGH A DIFFERENT LEGAL GROUND FOR RELIEF IS PRESENTED. (SLATER V BLACKWOOD (1975)

15 CAL 3d 791, 795; PANOS V. GREAT WESTERN PACKING CO. (1943) 21 CAL 2d 636, 638; SEE GENERALLY 3 WITKIN, CAL. PROCEDURE (2dED. 1971) PLEADING, §§24 p 1709.)

HERE PLAINTIFF ATTEMPTED IN 1976 TO STATE A CAUSE OF ACTION AGAINST THE OCHINERO AND WOODWARD GROUP BY OFFERING DIFFERENT LEGAL THEORIES THAN SHE HAD ADVANCED IN HER 1970 COMPLAINT.NONETHELESS PLAINTIFF HAD BUT ONE CLAIMED INJURY GIVING RISE TO BUT ONE CAUSE OF ACTION, NAMELY, THE ALLEGED EROSION OF HER PROPERTY. THE COURT'S ACTION IN SUSTAINING THE DEMURRERS OF THE OCHINERO AND WOODWARD GROUP WITHOUT LEAVE TO AMEND WAS PROPER (SLATER V BLACKWOOD, SUPRA, 15 CAL.3RD AT p795.)

PLAINTIFF'S CONTENTION THAT JUDGE ABBE SHOULD HAVE DISQUALIFIED HIMSELF FROM ACTING AS JUDGE IN THE INSTANT CASE WILL NOT BE REVIEWED ON APPEAL THERE IS NO INDICATION THAT PLAINTIFF MADE A MOTION IN THE LOWER COURT TO DISQUALIFY JUDGE ABBE: THEREFORE, SHE HAS VAIVER HER RIGHT TO RAISE THE ISSUE

ON APPEAL. (SEE PEOPLE V ESCOBEDO (1973) 35 CAL APP. 3d 32, 36; WHISTLER V ONDULANDO HIGHLANDS CORP. (1970) 13 CAL.APP. 3d 108, 117,118.)

PLAINTIFF'S CONTENTION REGARDING HER LIMITED USE OF THE LAW LIBRARY IS NOT SUPPORTED BY CASE AUTHORITY;THEREFORE, IT MAY BE DEEMED TO BE WITHOUT FOUNDATION AND REQUIRES NO DISCUSSION.(SOLOMONT V. POLK DEVELOPMENT CO. 1966) 245 CAL. APP 2d 488, 496.)

THE JUDGMENT OF DISMISSAL IS AFFIRMED.

FOR THE COURT;

PUGLIA P.J.

FRIEDMAN

REYNOSO

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

THIRD APPELLATE DISTRICT

FILED DECEMBER 28, 1977

MINTA H. REICHEL 3 CIVIL 16263

v SHASTA 54513

OCHINERO CONSTRUCTION CO.

BY THE COURT:

APPELLANT'S PETITION FOR REHEARING IS DENIED.

DATED: DECEMBER 28, 1977

FRIEDMAN, ACTING P.J.

CC: MINTA H. REICHEL
P.O. BOX 2304
REDDING, CA 96001

NELS A CHRISTENSEN
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P.O. BOX 676
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ROLAND IVERSON, JR
RICH, FUIDGE, MARSH & MORRIS
ATTORNEYS AT LAW
P.O. DRAWER A
MARYSVILLE, CA

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE THIRD APPELLATE DISTRICT

MINTA H. REICHEL, PLAINTIFF AND APPELLANT,	) 3CIVIL 17535) (SUPERIOR) COURT NO.
vs	) 58025)
CITY OF REDDING, ET AL, DEFENDANTS AND RESPONDENTS	)

(FILED NOV 27, 1978 COURT OF APPEAL THIRD DISTRICT WILFRIED J. KRAMER, CLERK BY_____DEPUTY)

PLAINTIFF APPEALS FROM A JUDGMENT OF DISMISSAL AFTER THE TRIAL COURT SUSTAINED DEFENDANTS' DEMURRERS TO HER COMPLAINT WITHOUT LEAVE TO AMEND. THE RULING WAS BASED ON RES JUDICATA, COLLATERAL ESTOPPEL, AND ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES.

PLAINTIFF FILED A COMPLAINT IN 1970 BASED PRINCIPALLY ON THE THEORY THAT DEFENDANTS WERE NEGLIGENT IN THE CLEARING OF CALABOOSE CREEK AND THE INSTALLATION AND CONSTRUCTION OF HER PROPERTY: SHE SOUGHT DAMAGES TO HER

SWIMMING POOL, ITS COPING AND APRON, AND THE RETAINING WALL AND FENCE. (REICHEL V CITY OF REDDING (5/23/75) 3 CIV. 14495 (REICHEL I). THE TRIAL COURT GRANTED JUDGMENT IN FAVOR OF DEFENDANTS, AND WE AFFIRMED (IBID).

IN 1976 PLAINTIFF AGAIN FILED A COMPLAINT FOR DAMAGES AGAINST THE SAME DEFENDANTS; SHE ALLEGED FIVE CAUSES OF ACTION. THE FIRST WAS FOR INVERSE CONDEMNATION AGAINST THE CITY OF REDDING, AND THE SECOND THROUGH FIFTH WERE FOR TRESPASS AND ENCROACHMENT AGAINST THE REMAINING NAMED DEFENDANTS (OCHINEROR AND WOODWARD GROUP) AND VARIOUS UNNAMED DOE DEFENDANTS. THE CAUSES OF ACTION WERE BASED ON THE SAME FACTUAL SITUATION AS HAD BEEN THE SUBJECT OF HER 1970 COMPLAINT, NAMELY THE CLEARING OF CALABOOSE CREEK AND THE CONSTRUCTION OF A CULVERT AND PARKING LOT ADJACENT TO PLAINTIFF'S PROPERTY. WE AFFIRMED THE JUDGMENT OF DISMISSAL ENTERED AFTER TRIAL COURT SUSTAINED DEMURERS TO THE COMPLAINT BY THE OCHINERO

AND WOODWARD GROUP ON THE BASIS OF RES JUDICATA AND COLLATERAL ESTOPPEL. (REICHEL V OCHINERO CONSTRUCTION COMPANY, INC. (12/12/77) 3 CIV 16263 (REICHEL II).

IN THE INSTANT CASE, PLAINTIFF FILED A COMPLAINT ON JULY 5, 1977, WHICH AGAIN NAMED THE SAME DEFENDANTS AND ADDITIONALLY NAMED THREE EMPLOYEES OF THE CITY OF REDDING (JACK LANG, ENGWARD NIELSEN, ROBERT GALUSHA). SHE NOW ALLEGES SIX CAUSES OF ACTION. THE FIRST IS FOR INVERSE CONDEMNATION BY THE CITY OF REDDING AND ALSO FO FOR THE NEGLIGENCE AND OTHER CONDUCT OF ITS EMPLOYEES (RES PONDEAT SUPERIOR). THE SECOND CAUSE OF ACTION IS FOR FRAUDULENT CONDUCT BY THE AFOREMENTIONED CITY EMPLOYEES AS WELL AS WILLARD WOODWARD AND EDWARD OCHINERO. THE THIRD AND FOURTH CAUSES OF ACTION ARE FOR TRESPASS AND ENCROACHMENT BY THE OCHINERO AND WOODWARD GROUP: THE FIFTH AND SIXTH CAUSES OF ACTION ARE FOR EXEMPLARY DAMAGES BASED ON THE WILLFUL,

WANTON AND MALICIOUS ACTS ALLEGED IN THE PRECEDING CAUSES OF ACTION. ALL SIX CAUSSES OF ACTION ARE AGAIN BASED ON THE SAME FACTUAL SITUATION AS THE PRIOR LAWSUITS, NAMELY, THE CLEARING OF CALABOOSE CREEK AND THE CONSTRUCTION OF A CULVERT AND PARKING LOT ADJACENT TO PLAINTIFF"S PROPERTY.

THE DEFENDANTS FILED DEMURRERS TO THE COMPLAINT. ON NOVEMBER 3, 1977, THEY WERE SUSTAINED WITHOUT LEAVE TO AMEND, AND THE JUDGMENT OF DISMISSAL FROM WHICH PLAINTIFF APPEALS WAS ENTERED ON NOVEMBER 16, 1977.

WE REJECT THE CONTENTION THAT THE TRIAL COURT ERRED IN SUSTAINING DEFENDANTS'DEMURRERS. THE DOCTRINES OF RES JUDICATA ARE APPLICABLE TO THE CASE AT BENCH, THEREFORE WE NEED NOT CONSIDER PLAINTIFF"S REMAINING CONTENTIONS.* AS STATED IN OUR OPIN-

* * PLAINTIFF'S CONTENTION THAT RESTRICTED USE OF THE LAW LIBRARY CONSTITUTES A DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW IS NOT PROPERLY BEFORE US (CODE CIV. PROC., SEC. 904.1).

ION IN REICHEL II: " A CAUSE OF ACTION IS BASED UPON THE INJURY TO THE PLAINTIFF, AND NOT THE PARTICULAR LEGAL THEORY BY WHICH PLAINTIFF CHARACTERIZES DEFENDANT"S WRONGFUL ACT. HENCE A JUDGMENT FOR THE DEFENDANT IS A BAR TO A SUBSEQUENT ACTION BY THE PLAINTIFF BASED ON THE SAME INJURY TO THE SAME RIGHT, EVEN THOUGH A DIFFERENT LEGAL GROUND FOR RELIEF IS PRESENTED."

WE ARE HERE PRESENTED WITH THE SAME SITUATION AS IN REICHEL II. PLAINTIFF IS AGAIN ATTEMPING TO STATE A CAUSE OF ACTION AGAINST DEFENDANTS BY ALLEGING DIFFERENT LEGAL THEORIES; SHE NOT ONLY ALLEGES DIFFERENT THEORIES BUT BRINGS IN ADDITIONAL PARTIES. SINCE THE COMPLAINT IS AGAIN BASED UPON EROSION TO HER PROPERTY, WE AGAIN FIND THAT SHE HAD BUT ONE CLAIM FOR RELIEF. (SEE REICHEL II.) THERE HAVING BEEN A PRIOR ADJUDICATION ON THE MATTER, PLAINTIFF IS BARRED FROM PROCEEDING UPON A DIFFERENT LEGAL GROUNDS FOR SUCH RELEIF. (SLATER V.BLACKWOOD (1975) 15 CAL.3d

791, 795; ; KINGSBURY V TEVCO. INC. (1978) 79 CAL.APP. 3D 314, 317). THE FACT THAT SHE ADDED THREE CITY EMPLOYEES TO HER LIST OF NAMED DEFENDANTS IN THE PRESENT SUIT DOES NOTHING TO ALTER THE SITUATION. THERE WAS SUBSTANTIAL IDENTITY OF PARTIES BETWEEN THE FORMER ACTIONS AND THE PRESENT ONE. (4 WITKIN, CAL. PROCEDURE (2d ED. 1971) JUDGMENT, SEC. 222, P. 3357; SEE HILTS V COUNTY OF SOLANO (1968) 265 CAL.APP. 2D 161, 1 6.)

PLAINTIFF CONTENDS THAT THE FOREGOING ANALYSIS IS APPLICABLE SINCE THERE WAS A CONTINUING TRESPASS AND SHE MAY BRING A N NEW ACTION FOR EACH TRESPASS. WHAT PLAINTIFF REFUSES TO COMPREHEND IS THAT THE TRIAL COURT HERETO DETERMINED THAT THERE IS NO ACTIONABLE WRONG UPON WHICH TO PREDICATE LIABILITY FOR THE HARM THE PLAINT TIFF'S PROPERTY, AND WE AFFIRMED THAT JUDGMENT IN REICHEL I. PLAINTIFF HAS FAIL-

ED TO ALLEGE A NEW FACTUAL BASIS FOR HER COMPLAINT-- SHE MERELY ASSERTS THAT A STORM IN AUGUST 1976 CAUSED FURTHER EROSION TO HER PROPERTY. A "CONTINUING TRESPASS" IS BASED UPON A WRONGFUL ACT WHICH CONTINUES TO CAUSE INDURY. (2 WITKIN, CAL. PROCEDURE (2d ED. 1970) ACTIONS SEC. 321, PP 1165-1166). THE TRIAL COURT'S DETERMINATION WHICH WE AFFIRMED IN REICHEL I, THAT DEFENDANTS' CONDUCT DID NOT CONSTITUTE A WRONGFUL ACT IN THE FIRST INSTANCE, PRECLUDES A SUBSEQUENT CLAIM FOR FURTHER INJURIES DUE TO THAT CONDUCT.

PLAINTIFF H S SHOWN NO JUSTIFICATION FOR THIS APPEAL, LET ALONE ANY REASONABLE ARGUMENT TO SUPPORT IT. THE APPEAL IS FRIVOLOUS WITHIN THE MEANING OF CALIFORNIA'S RULES OF COURT, RULE 26(a). A SANCTION OF $500. IS IMPOSED AGAINST PLAINTIFF, PAYABLE PRORATA TO DEFENDANTS CITY OF REDDING, OCHINERO CONSTRUCTION COMPANY, INC., A CORPORA-

TION, AND WOODWARD AND NICHOLS, A COPART-

NERSHIP.

THE JUDGMENT IS AFFIRMED.

PARAS ACTING P.J.

****

CLERK'S OFFICE SUPREME COURT
4250 STATE BUILDING, S N FRANCISCO, CA.

FILED.

I HAVE THIS DAY FILED ORDER JANUARY 24, 1979

HEARING DENIED

IN RE: 3 CIV NO. 17535

REICHEL

vs

CITY OF REDDING, ET AL

RESPECTFULLY,

G.E. BISHEL
CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SHASTA

NO. 99
B. 486

MAY 1, 1973 HON. R.W. ABBE, JUDGE

#42361

MINTA H. REICHEL
PLAINTIFF

VS

CITY OF REDDING, ET AL
DEFENDANTS.

O R D E R

COUNSEL FOR PLAINTIFF HAS FILED HEREIN A MOTION TO BE REMOVED AS ATTORNEY OF RECORD FOR THE PLAINTIFF. THE COURT HAS DISCUSSED THIS MATTER WITH BOTH PLAINTIFF AND COUNSEL FOR PLAINTIFF AND IT IS QUITE APPARENT TO THE COURT THAT THE RELATIONSHIP BETWEEN THE PLAINTIFF AND HER ATTORNEY HAS DETERIORATED TO THE POINT THAT NEITHER PLAINTIFF NOR HER ATTORNEY WISH TO BE ASSOCIATED WITH EACH OTHER IN ANY WAY. THE MATTER HAVING ALRRADY BEEN SUBMITTED

TO THE COURT, THE COURT CAN SEE NO REASON FOR NOT GRANTING THE REQUEST OF COUNSEL FOR PLAINTIFF, CONCURRED IN BY PLAINTIFF.

THE COURT ORDERS THAT CIBULA & CIBULA SHALL BE DISCHARGED AS ATTORNEYS OF RECORD HEREIN AND THAT THE PLAINTIFF SHALL BE SUBSTITUTED HEREIN IN PROPRIA PERSONNA. COUNSEL FOR DEFENDANTS ARE ADVISED THAT THE PLAINTIFF'S ADDRESS IS:1945 SHASTA ST. REDDING, CALIFORNIA

FILED
MAY 2, 1973
/s/ G. Savage

CIBULA & CIBULA
MINTA H. REICHEL, 1945 SHASTA ST., REDDING

CLYDE SMALL

CHARLES C. DAWSON, JR., ATT. AT LAW,
DRAWER A, MARYSVILLE, CA 95901

LAUGHLIN, CRAIG & CHRISTENSEN, ATT. AT LAW
P.O. BOX 676 CHICO, CA 95926

/s/ R.W. ABBE JUDGE

PROOF OF SERVICE BY FEDERAL EXPRESS

I, THE UNDERSIGNED, DECLARE UNDER PENALTY OF PERJURY THAT I AM A CITIZEN OF THE UNITED STATES AND A RESIDENT OF THE COUNTY OF SHASTA OF CALIFORNIA.

I AM OVER 18 YEARS OF AGE AND A PARTY TO THE WITHIN ACTION AS A NON-LAWYER LITIGANT IN PROPRIA PERSONNA WITHIN THE ENTITLED ACTION. ON SEPTEMBER 22, 1982 I SERVED THE WITHIN: PETITION FOR CERTIORARI

1. JOHN KENNY, SHASTA COUNTY COUNSEL, SHASTA COUNTY COURTHOUSE, COURT ST, REDDING, CALIFORNIA 96001,

2. JAMES T. FREEMAN OF DIEPENBROCK, WULFF, PLANT & HANNEGAN, 455 CAPITOL MALL, SUITE 800, SACRAMENTO, CA 95814,

3. KATHLEEN E. JOLLY, FRANKLIN CIBULA, P.O. BOX AM, REDDING, CA 96099,

4. DAVID SCHMIDT, PRESLEIGH, AREL AND D DUNLAP, 1745 YUBA STREET, P.O. DRAWER AT, REDDING, CA. 96099

5. W. LEONARD WINGATE, WELLS, WINGATE & SMALL, P.O. BOX 1846, REDDING, CA 96099

6. SOLICITOR GENERAL, DEPARTMENT OF JUSTICE WASHINGTON, D.C. 20530

7. CALIFORNIA STATE ATTORNEY GENERAL, 555 CAPITOL MALL, SACRAMENTO, CA. 95814

Dated: September 22, 198

Sheila L. Kuehl